

FINAL MINUTES

SAFETY AND HEALTH CODES BOARD PUBLIC HEARING THURSDAY, OCTOBER 26, 2006

The Safety and Health Codes Board (“Board”) held a Public Hearing on Thursday, October 26, 2006 in Courtroom A, State Corporation Commission, 1300 East Main Street, Richmond, Virginia. Board Chairman Louis Cernak called the meeting to order at 10:00 a.m.

BOARD MEMBERS PRESENT: Mr. Louis Cernak, Chairman
Ms. Juanita Garcia
Mr. M. Frank Hartsoe
Mr. Daryl L. Hines
Ms. Anna Jolly
Mr. Satish Korpe
Dr. James H. Mundy
Mr. Rick Linker
Ms. Milagro Rodriguez, Secretary
Mr. Linwood Saunders
Mr. Chuck Stiff
Mr. Daniel A. Sutton
Dr. Khizar Wasti

BOARD MEMBERS ABSENT: Mr. Roger Burkhart, Vice Chairman

STAFF PRESENT: Mr. Ray Davenport, Labor and Industry,
Commissioner
Mr. Bill Burge, Assistant Commissioner – Programs
Mr. Glenn Cox, Director of VOSH Programs
Mr. Ronald Graham, Health Compliance Director
Mr. Jay Withrow, Office of Legal Support Director
Mr. John Crisanti, Office of Planning and
Evaluation Manager
Ms. Jennifer Wester, Director, Cooperative
Programs
Mr. William Dellinger, Confidential Policy Analyst
Ms. Lisa Watts, Accounting Manager
Ms. Wendy Williams, Human Resource Analyst
Ms. Regina Cobb, Agency Management Analyst SR

OTHERS PRESENT: John D. Sharer, Esq., Assistant General Counsel,
Dominion Resources Services, Inc.,
Richmond, VA
Jennifer L. Hairfield, Shorthand Reporter
Mr. Mike Tysinger, Verizon

PUBLIC COMMENT:

Chairman Cernak opened the Public Hearing at 10:00 a.m. Mr. Cernak began the Public Hearing by having each Board member introduce himself or herself. He next explained that the purpose of the hearing was to take comments from the public regarding the proposed regulation: 16 VAC 25-75, which deals with the amendment to the General Industry Standard for Telecommunications, General, Approach Distances, §1910.268(b)(7)(i). He then opened the floor to comments from the public on the proposed regulation.

The first speaker was Mr. Jay Withrow, Director, Office of Legal Support. He presented a summary of the meeting between Virginia Occupational Safety and Health (VOSH) Staff and Members of Regulated Community Potentially Affected by Proposed Regulation to amend the General Industry Standard for Telecommunications, General, Approach Distances, §1910.268(b)(7)(i), 16 VAC 25-75.

He stated that since there are new Board members and since this adoption process goes back to December 2004, he gave a brief primer on the regulatory adoption process generally. He explained that the regulatory process began with a Notice of Intended Regulatory Action (NOIRA) process which started in December 2004 and went through an internal review process all the way to the Governor's office before it is published and then there's a 30-day comment period. After that, the Department came back to the Board, reviewed any comments that were filed and then made a recommendation whether to adopt the proposed regulation or not.

Mr. Withrow stated that, in this case, the NOIRA was published on July 11, 2005 with a 30-day comment period that ended August 11, 2005. There were no written comments received. The Department presented the Board with a proposed regulation on September 15, 2005. The Board then adopted the regulation as a proposed regulation which then went back through an internal review through the Commissioner, the Secretary of Commerce's Office, the Governor's Office and the Department of Planning and Budget looked at it from an economic impact standpoint. Mr. Withrow added that at that point in this process, the Department was contacted by people in the telecommunications industry as well as the power generation industry with questions about the regulation which affects both industries.

On March 16, 2006, Mr. Withrow met with representatives from Dominion Power, Verizon, Cox Communications, DOLI staff and the Department of Planning and Budget (DPB). He stated that what the Department is doing affects only §1910.268(b)(7)(i). The whole regulation is designed to deal with the issue of employees working around overhead high voltage lines. He continued by stating that the reason the Department is changing this regulation in the telecommunications industry is that there is a loophole with respect to protection of the employees. Mr. Withrow added that a similar loop hole was found in the construction standard that dealt with employees working around overhead power lines. He referenced a provision that stated how close a worker could get to power lines if the worker is going to get inside the standard approach distances.

Mr. Withrow informed the Board that if a worker were to go inside those distances, this provision allows three options under the regulation for extra employee protection:

- (1) Insulate employee from the electricity by gloves, sleeves and other types of personal protective equipment;
- (2) Guard the actual electrical line by wrapping it with blankets;
- (3) Completely de-energize the line.

Mr. Withrow stated that in the general industry standard, if a worker was wearing gloves and sleeves and had to go inside the approach distance, he was only considered to be protected against the electrical part on which he was actually working. Mr. Withrow related a situation whereby there were multiple energized lines and the worker working on one electrified part would be protected with his gloves but could get injured or killed by contacting a nearby line that was not insulated. The worker would not be protected from contact with the electrified line by anything other than his gloved hand. Mr. Withrow added that the general industry standard would have required the other electrified lines to have blankets around them.

In comparing the general industry regulatory language to that of the construction and telecommunications industries, Mr. Withrow stated that, based on interpretations by courts, as long as workers were wearing gloves, they were considered to be in compliance with the standard, even though the gloves really only provided protection in front of the workers.

Mr. Withrow continued by recommending that the provision in the telecommunications industry be changed to match the increased protections of the general industry standard.

He then referred to his handout which included a discussion of what happened at the aforementioned meeting the interested parties. He stated that the telecommunications industry was concerned about a number of issues that the attendees agreed could be addressed during this public comment process as a way to also get the Department's position into the record on those issues. Also, Mr. Withrow called the Board's attention to two attachments to his memo: a letter from a representative of Verizon; and a copy of the Economic Impact Analysis prepared by the Department of Planning and Budget (DPB) developed as part of their review of the proposed regulation. In referencing the Economic Impact Analysis, he stated that it concludes that if these issues are handled in the way they were in the meeting, DPB does not believe that there will be any significant economic impact other than, perhaps, some training associated with the regulation.

Mr. Withrow listed the following work activities that were discussed during the March 16, 2006 meeting:

- 1) Setting poles in power – Mr. Withrow informed the Board that Verizon engages in the activity of setting poles in the ground. He then described this process and

the neutral wire which can be subject to voltage in very limited circumstances. He added that Dominion Power and the Department did not consider the neutral wire to normally be an energized part and did not see any safety reason to regularly blanket the neutral lines. He stated that the Department did not think that the regulation would have any impact on current work practices for the industry.

- 2) Storm/emergencies – Mr. Withrow stated that, during storms and emergencies, Verizon indicated that it does not do any work until power line officials give them clearance to work in the area. He stated that once Verizon receives clearance additional safety precautions are also taken. Mr. Withrow informed the Board that during storm and emergency situations, the Department would not use an enforcement mode to protect employees but instead the Department would use its consultation mode. He stated that the Department would be willing to issue interpretative language to address this work situation.
- 3) Street light brackets – According to Mr. Withrow, Verizon stated that it is required by current regulation in 1910.268 to test certain street light brackets to determine if they are energized or not under certain conditions. He stated that, under normal conditions, the brackets are not supposed to be energized, and the testing must be done bare handed without the use of gloves. He mentioned that tools are used to protect the worker for up to 20,000 volts. He stated that the Department would be willing to issue interpretative language to address this work situation that concludes that current work practices would not need to be changed in response to the proposed regulation.
- 4) Placement of new cables through use of silver strand line – After Mr. Withrow explained Verizon’s installation process of new cable, he added that the Department did not feel that Verizon’s current work practices would not need to be changed in response to the proposed regulation.
- 5) Municipally owned poles and municipally owned or operated telecommunication systems – Since there were no representatives from local government at this meeting, the Department contacted the Virginia Municipal League and the Virginia Association of Counties to see if they have concerns about this regulation.

Mr. Withrow continued by briefly discussing four other issues that were discussed. First, he noted that, after checking its records, Dominion Power could not find where it had charged Verizon for covering equipment in a manner that could be affected by the proposed regulations. Secondly, he noted that the Department assured Verizon that, under the proposed regulation, employees were still allowed to use just gloves and not be required to use both gloves and sleeves.

Thirdly, Mr. Withrow informed the Board that Dominion Power felt that the proposed language could be read to allow a telecommunications worker to knowingly work on an energized line or equipment. He asserted that all parties agreed that telecommunications workers are not authorized to engage in such work, and that it is not the intention of the Department nor the Board to allow such work. Mr. Withrow stated that the Department agreed that the language could be modified as part of the comment process to address this issue.

Lastly, Mr. Withrow mentioned that the group discussed whether the proposed language could in any way affect personal injury or worker's compensation law by changing in some manner the "minimal care standard." He continued by stating that the group agreed that as far as their employees were concerned, they would be covered by Worker's Compensation laws and that the proposed regulation would have no effect on such cases.

The next speaker was Mr. John Sharer, Assistant General Counsel for Electric Delivery in the Law Department of Dominion Resources, Inc., one of the nation's largest producers of electricity and natural gas. Mr. Sharer informed the Board that he was testifying on behalf of Virginia Electric and Power Company, also known as Dominion Virginia Power. He added that Dominion Virginia Power is a regulated public utility that generates, transmits and distributes electricity for sale to more than two million homes and businesses in Virginia and northeastern North Carolina.

Mr. Sharer began by stating that Dominion Virginia Power supports the objective of the proposed rule to amend the telecommunications standard to provide equivalent protection to telecommunications employees working in similar proximity to power lines as her counterparts under the electric power generation, transmission and distribution standard. Mr. Sharer continued by stating that as an essential part of its public service mandate to furnish safe and reliable electric service, Dominion Virginia Power itself owns, operates and maintains 835,632 electric distribution poles in Virginia and its electric facilities are attached to 980,391 electric distribution poles and utility poles in the Commonwealth. He stated that for these reasons, Dominion Virginia Power is vitally interested in the proposed regulation, and in ensuring that telecommunications workers do not breach the "approach distances" in Table R-2 as they work in proximity to power lines or "hot" electrical parts.

Mr. Sharer informed the Board that the "situational exposure" i.e., the hazards confronting electrical generation, transmission and distribution workers, and those that confront telecommunications workers are fundamentally different. Mr. Sharer stated that there are no situations in which telecommunications workers would be or should be working on live electrical parts. He added that staff of the Department of Labor and Industry agrees with Dominion Virginia Power on this point. While noting that Mr. Withrow had assured that the language could be modified as part of the comment process to address the issue of telecommunications workers working on live electrical parts, Mr. Sharer requested that the final rule incorporate the modified change.

Next, Mr. Sharer requested that the Board clarify the important distinction between minimum approach distances and reaching distances--whether everything within the telecommunications worker's reach must be covered or de-energized-- as this may have a significant impact both on telecommunications companies and electric utilities.

Mr. Sharer called the Board's attention to the following statement on page two of the briefing package under Basis and Purpose: "When approach distances are certain to be reached, telecommunications workers must call the electric company that controls the power lines that [the] work is near. The electric company then can either cover the power lines that may pose a danger or temporarily cut power to those lines altogether." He stated that the Board has not established any time frames for these activities. He continued by stating that it is neither reasonable nor feasible to expect an electric utility to respond immediately, without advance warning or prior consultation, to a telephone call summoning the electric utility to a job site where telecommunications workers are working. He added that, before the electric utility performs any work, the telecommunications company and the electric utility must first discuss, among other things, a schedule for the work, and the parties must reach agreement upon the electric utility's estimated cost and charges to the telecommunications company to implement the necessary safety measures. He then asked that in the final regulation, the Board acknowledge the importance of these preliminary steps. He added that the Board make it clear that an electric utility has no obligation to respond to a telecommunications company's request for assistance in cases in which the telecommunications company has not first consulted the electric utility concerning scheduling, pricing and other issues.

Mr. Sharer next asked that the Board change the incorrect terminology "electrical transmission workers" or "telecommunication electrical transmission workers" that was used in the proposed rule to describe telecommunications workers. He added that Dominion Virginia Power is not familiar with these terms.

In conclusion, Mr. Sharer asked that the requested changes be incorporated into the final rule.

There were no other speakers. Mr. Cernak thanked both speakers involved and adjourned the meeting at 11:27 a.m.